



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201306027**  
Release Date: 2/8/2013

Date: November 15, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

501.07-00; 501.07-03; 501.07-06

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(7). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)  
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: September 26, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = date  
C = date  
D = state  
F = date  
G = name  
H = nationality

**UIL:**

501.07-00  
501.07-03  
501.07-06

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(7). The basis for our conclusion is set forth below.

**Issues**

Does your non-member income exceed the 15/35% test, thereby failing you under IRC 501(c)(7), and do you fail to meet facts and circumstances showing substantially all of your activities are for pleasure, recreational and other non profit purposes? Yes, for the reasons described below.

**Facts**

You were formed as a corporation in D on F. Your Articles of Incorporation state you will promote and further the interests of the members of the G family of H extraction living in D, by aiding in developing the fraternal spirit between the members of the family and to assist the said members by social and educational means to be worthy citizens and residents of the United States.

You were previously granted exemption under 501(c)(7) of the Code. Your exemption was revoked on B, due to not filing tax returns, and you submitted an application for reinstatement on C.

You are dedicated to the mutual benefits of the G family members, providing a place for members to bond, support, socialize and learn from each others experiences. To do so, you conduct functions such as monthly luncheons for your members to come together and discuss whatever is on the monthly agenda. This includes lunar new year celebrations, parent day and holiday luncheons, and hold an annual spring banquet. You hold a scholarship luncheon and provide awards to encourage the children of your members to study hard.

In addition to the above activities, you aim to perpetuate the customs and traditions of the old country through your functions. You participate with other agencies and organizations and in community affairs to assist the public and serve similar objectives, and help newly arrived immigrants assimilate into the country.

Membership is open to anyone over the age of 18 whose family name is characterized by a certain character of the H language. You have one class of membership.

You bought a building over 30 years ago, which was then renovated. Your members, who felt having some rental income would decrease donations required to support your operations, subsidized both the purchase and renovation. This facility is used partially for your functions, and the remainder is rented out. The tenants living on the rented portions of your property do not interfere with your use of the property other than the stated purpose of being tenants.

Your income is from member contributions and rental income. Over a recent three-year operating period, of your total income, you averaged %, %, and %, respectively, from tenant rental income. Over that same period, you listed no membership dues or assessments. You have stated the rental income helps decrease donations members must make. Your expenses are split roughly between your exempt function activities and rental expenses such as taxes, insurance and utilities.

#### **Law**

Section 1.501(c)(7)-1(a) of the Regulations states that the exemption provided by section 501(a) of the Code for an organization described in section 501(c)(7) of the Code applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inure to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Section 1.501(c)(7)-1(b) of the Regulations states that a club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, and is not exempt under section 501(a) of the Code. Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

Rev. Rul. 58-589, 1958-2 CB 266 sets forth the criteria for exemption under section 501(c)(7) of the Code, and provides that a club may lose its exemption if it makes its facilities available to the general public. A club will not be denied exemption merely because it receives income from the general public provided such participation is incidental to and in furtherance of its general club purposes. To retain exemption a club must not enter into outside activities with the purpose of deriving profit. If such income producing activities are other than incidental, trivial or nonrecurrent, it will be considered that they are designed to produce income and will defeat exemption.

Rev. Rul. 69-220 1, 1969-1 CB 154, held a social club that receives a substantial portion of its income from the rental of property and uses such income to defray operating expenses and to improve and expand its facilities is not exempt under section 501(c)(7) of the Code. The club purchased an office building, part of which is leased to commercial tenants. operating expenses of the building, including the part used as a clubhouse. The club uses the net income from the rental operation to make capital improvements and to expand the facilities offered to its members. This club is not exempt from federal income tax under section 501(c)(7) of the Code because it is regularly engaged in a business ordinarily carried on for profit and because net income from the activity is inuring to the members of the club.

The Committee Reports for Public Law 94-568, HR 1144, provides under 501(c)(7) that social clubs be operated substantially for pleasure, recreation and other non profit purposes. An organization may receive up to 35% of its gross receipts from a combination of investment income and non-member receipts, as long as non-member receipts do not represent more than 15% of total receipts

#### **Application of Law**

Per Section 1.501(c)(7)-1(a) of the Regulations, substantially all of your activities are not for pleasure, recreation, or other nonprofit purposes. Further, portions of your net earnings inure to members, disqualifying you from exemption under IRC 501(c)(7).

Per Section 1.501(c)(7)-1(b) of the Regulations, when a club engages in business it is not organized and operated exclusively for pleasure, recreation and other nonprofit purposes. As described in Rev. Rul. 58-589, although a club may receive some income

from the general public, your facility rental activities are more than incidental and, therefore, preclude exemption under section 501(c)(7) of the Code.

Rev. Rul. 69-220 held a social club that receives a substantial portion of its income from the rental of property and uses such income to defray operating expenses is not exempt under section 501(c)(7). Your property rental activity is conducted with the purpose to generate income, decreasing the amounts needed to be contributed by your members. This rental income is supporting your operations, and as it is decreasing the obligations of funds required to be paid by your members, it is inuring to their benefit.

A substantial portion of your income is generated from business done with the general public. By receiving, on average, around % of your revenue from non-members, you fail the membership income tests set forth by the Committee Reports on Public Law 94-568. You do not meet the facts and circumstances exception for this income test as your property rental activity is regular and substantial.

### **Conclusion**

Based on the facts provided above, we hold that you do not meet the requirements for tax exemption under Section 501(c)(7) of the Code. On average, % of your income is generated from rental activities to non-members, failing the income test under 501(c)(7). As a result, you are not operating substantially for pleasure, recreational or other non profit purposes. Further, your net income inures to your members. Accordingly, you do not meet the requirements for exemption under Section 501(c)(7) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Publication 892